IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

WP(C).No. 6800 of 2007(H)

PETITIONERS:

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1. JANAJAGRATHA (PEOPLE'S VIGILANCE),
   XIV/304, THORAPALAYAM, PALAKKAD-678 001,
   REPRESENTED BY ITS SECRETARY,
   DR.P.S. PANICKER, POURNAMI,
   THURUPALAYAM, PALAKKAD-678 001.

2. G. VELUSWAMY GOWDER,
   S/O.GANAPATHY GOWDER, GANAPATHY NILAYAM,
   VALAYAR DAM P.O., PALAKKAD.

3. CHINNAMUTHUSWAMY,
   S/O.SUBBAYYA GOWDER, NEYVELI HOUSE,
   CHANDRAPURAM, VALAYAR DAM P.O., PALAKKAD.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY
   CHIEF SECRETARY TO GOVESRNMENT OF KERALA,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. THE PRINCIPAL SECRETARY TO GOVERNMENT
   OF KERALA, DEPARTMENT OF FINANCE,
   THIRUVANANTHAPURAM.

3. THE COMMISSIONER OF SALES TAX,
   THIRUVANANTHAPURAM.

4. THE DISTRICT COLLECTOR, PALAKKAD.

5. THE TAHSILDAR, LAND ACQUISITION (G),
   PALAKKAD.

BY SENIOR GOVERNMENT PLEADER SHRI T.G.SUNIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

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W.P.(C) No. 6800 of 2007

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Dated, this the 29th day of November, 2007

JUDGMENT

The 1st petitioner is a registered voluntary organisation. Petitioners 2 and 3 are stated to be farmers. 30 acres of land is sought to be acquired for the purpose of establishing the integrated check post for Sales Tax and Motor Vehicles departments at Valayar. It includes properties owned by the petitioners 2 and 3. It is averred that there is a pond covering in the area of 5 acres of land which is being used as natural reservoir for collecting water. The water collected in the pond is being used for cultivation purposes by owners of more than 60 acres of land situated in the nearby area. It is also averred that the pond preserves ecology of the area by collecting rain water. According to the petitioners the land where the pond is situated is being acquired for the construction of the check post. It is averred that it will destroy the entire agricultural activities in the area and will cause irreversible damage to the environment and

ecology. It is also contended that, due to political interference 1.50 acres of land belonging to the sympathisers of a political party in power is being exempted.

2. It is contended that the Valayar Check Post is the busiest check post in Kerala. At present it is functioning in an area having only an extent of 2.97 acres. An integrated check post is absolutely essential to streamline the present odds and difficulties faced by the public as well as staff. It is stated that only 17 families are residing in that area and they are mostly agricultural labourers. It is stated that the water holdings in the area are very meager and is not as large as a proportion profiled by the petitioners. In para 3 of the counter affidavit filed by the 4th and 5th respondents on 16th August 2007, it is stated as follows:

> " The catchment area of the Walayar Dam is so near to the area. Hence there is ample source of ground water in the area. The water holdings in this area is very meagre and is not as large as a proportion projected by the petitioner. It is submitted that the pond covers only an extent of 3.80 acres. Moreover during summer the pond dries up. It is pertinent to note that the project report of M/s.KITCO suggest that the pond will be embellished and preserved in all its pristine beauty and grace and the pond will be utilised for harvesting rain water."

3. It is admitted by the 4th respondent that one Sri. C.V.Vijayan, Sri.K.Sudevan and Sri.D.Thomas submitted a

petition before the Honourable Chief Minister of Kerala. The District Collector was directed to convene a conference to decide the issue. Accordingly, a meeting was convened and the District Collector directed the the Deputy Commissioner and Special Tahasildar to conduct a joint site inspection of land under acquisition and submit a report in the matter. In the supplementary reply affidavit it is stated that the requisitioning authority had informed the District Collector that no exemption can be granted to any person whose lands are sought to be acquired. They had reported that if those land is exempted the project will be adversely affected.

4. The learned Govt. Pleader on instructions from the respondents has submitted that, no land has been so far exempted. But going by the averments in the affidavit it would appear that the respondents are not yet taken any decision in the matter. If the respondents exempt any land sought to be acquired for the ckeck post for the acquisition I do not find any reason to deny the same benefit to the area covered by the pond also. So there will be a direction to the respondents to exempt the land covered by the pond also in case they exempt any plot of land covered by the notification for the construction of

the Valayar integrated check post.

5. The grievance of the petitioners is that though Section 17(4) was invoked an enquiry under Section 5A was conducted with the case of the above stated persons who are similarly placed as the petitioners but the petitioners are denied of that benefit. It is argued that the District Collector had considered the objections raised by some persons who are also affected by the same acquisition in pursuance to the directions issued by the Honourable Chief Minister.

6. The learned counsel appearing for the petitioner relying on a principle laid down in **Padmavathi Amma v. State of Kerala** (1983 KLT (29) (F.B.)) has argued that before issuing a declaration the statutory authority must be satisfied that the 'particular land' will be suitable for the public purposes. He also relied on the principles laid down in **Intellectuals Forum Thirupathy v. State of A.P.** (2006 (3) SCC 549) and also **Karnataka Industrial Areas Development Board v. C.Konchappa and others** (2006 (6) SCC 371). It is argued that though it is the duty of the Government to take steps to establish industries etc. for the welfare of the society it must make every endeavour to maintain and sustain the ecology as

well as its impact on environment. It is pointed out that the Apex Court had directed that a study on the impact is to be conducted. The material on record shows that even though urgency clause under Section 17(4) was invoked, objections of some of the land owners who are likely to be affected by the same notification were considered by the competent authority. I do not find any reason to discriminate the petitioners alone. Considering the fact that the allegation is that present acquisition is likely to create imbalance of ecology, it is only just and proper that either the Land Revenue Commissioner or the Secretary concerned shall consider the objection of the petitioners before issuing a declaration under Section 6(1) of the Act and takes a decision in the matter with due notice to the petitioners.

7. In the result the writ petition is disposed in the following manner:

There will be a direction to the respondents to exempt the land covered by the pond in case any land now notified for the purpose of the construction of integrated check post at Walayar is exempted. There will be a further direction to the Land Revenue Commissioner/Secretary concerned who is the competent authority to issue Section 6 declaration to hear the

objection raised by the petitioners with specific reference to their objections regarding the acquisition of the pond situated within the properties now sought to be acquired with due notice to the petitioners and also requisitioning authority and take a decision in the matter as expeditiously as possible at any rate within two months from the date of receipt of a copy of this judgment. Learned Government Pleader shall forward a copy of the judgment to the competent authority. Until the matter is heard and a decision is taken, dispossession of the petitioners from the land notified is stayed.

K.PADMANABHAN NAIR,
JUDGE

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